

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1678.01
COMPLAINT INVESTIGATOR: Becky Bowman
DATE OF COMPLAINT: January 25, 2001
DATE OF REPORT: March 2, 2001
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: May 9, 2001

COMPLAINT ISSUES:

Whether the Lakeland School Corporation and the Northeast Indiana Special Education Cooperative violated:

511 IAC 7-30-3(w) with regard to the school's alleged failure to implement the final orders of the independent hearing officer ("IHO") in hearing #1177.00, specifically:

- a. failing to obtain the required consultative services within ten instructional days of the date the school received a copy of the IHO's decision;
- b. failing to include the parents in the collaboration to determine the specific role of the consultant;
- c. failing to develop an individualized education program (IEP) within 20 instructional days of the date the school received a copy of the IHO's decision;
- d. failing to provide bi-weekly reports to the parents regarding the student's progress;
- e. failing to provide the parents with access to the student's classroom as are other parents in accordance with official school policy or as indicated in the IEP; and
- f. failing to include parents in collaborative meetings with consultant in which comprehensive plan to address student's classroom needs is developed.

511 IAC 7-27-6(a)(2) with regard to the school's alleged failure to include *measurable* annual goals in the student's August 2000 IEP.

In a letter dated February 9, 2001, the complainant also alleged the school failed to comply with the IHO's orders, specifically, failing to include in the student's IEP the consultation time the school was to provide for related service personnel and the teacher of record.

The complaint investigation report was originally due on February 23, 2001. An extension of time to March 2, 2001 was granted by the director in order to accommodate an onsite visit to the school and to conduct personal interviews.

FINDINGS OF FACT:

1. A written decision in special education due process hearing #1177.00 was rendered by the independent hearing officer ("IHO") on December 2, 2001. The written decision contained orders to be carried out by the local school corporation and special education planning district (collectively "the School").
2. The following orders, included in the IHO's written decision, are the subject of this complaint:
 - a. Within ten school days of receipt of the written decision, the school is to "obtain and arrange for payment of the consultative services of one or more persons with expertise in

- inclusion of children with disabilities in general education and who also have expertise in working with children having Down Syndrome.”
- b. The specific roles of the consultant are to be “determined by collaboration among school personnel, the consultant(s), and the parents that address the Student’s needs as identified in the IEP.”
 - c. The final IEP is to be developed and approved within 15 days of the School’s receipt of the written decision and additional services are to begin within five school days of approval of the IEP and the consultant is to participate in the case conference committee meeting in which the final IEP is developed.
 - d. The School is to provide the parents with “a written summary report of the Student’s progress on IEP goals” at least once every two weeks.
 - e. The School is to provide the parents access to the Student’s classroom “to the same degree that parents of other children with disabilities have access or as indicated in the IEP.”
 - f. The consultant is to “work with teaching staff, parents, and paraprofessional to develop a comprehensive plan to address the Student’s needs in the classroom.”
 - g. The School is to provide “time for collaboration between the teacher and the therapists for up to two hours per month for each [related] service.”
 - h. “The IEP developed at the August 19, 2000 case conference is to be implemented, subject to changes as might develop from the following orders.”
3. On December 18, 2000, the IHO issued an amended order:
 - a. clarifying that the School was to obtain the consultant within 10 instructional days of the date of receipt the original written decision; and
 - b. extending the timeline in which to develop the final IEP from 15 instructional days to 20 instructional days from the date of receipt of the original written decision.
 4. The School received a copy of the IHO’s original written decision on December 6, 2000.
 5. School was closed due to incimate weather on December 12, 18, and 19, 2000. The School closed for holiday break on December 23, 2000, and reopened on January 3, 2001. Ten instructional days from the date of the School’s receipt of the written decision elapsed on January 3, 2001.
 6. The School interviewed potential consultants on January 4, 2001, and formally offered the position to a candidate on January 8, 2001. The candidate accepted the position on January 9, 2001.
 7. At the time the consultant was employed, the School provided her with a job description identifying 14 tasks for which the consultant would be responsible. The School explained to the consultant that the written description was a “starting point.” The consultant understood there was some flexibility with regard to the identified tasks.
 8. The School states it sought input from the parent regarding the consultant’s role prior to hiring the consultant. However, the parent indicates the School’s only request for input occurred prior to a meeting on January 31, 2001, and lasted approximately two minutes. In the narrative section of the January monitoring report, the School states “[a] collaboration meeting was held today (January 31, 2001 from 2:30 to 3:30 p.m.) . . . during which the team (including parent) discussed future role of the consultant.” The notes from that meeting state: “I [the School notetaker] discussed the use of the consultant and asked the group for additional ideas they would like the consultant to contribute.”
 9. The consultant has not discussed with the parent the specific roles she will have in working with the Student, the parent, or School personnel. She has not been involved in any meetings with the parent and School personnel to discuss the specifics of her role.

10. Twenty instructional days from the date the School received the IHO's written decision was January 17, 2001.
11. The School scheduled a CCC meeting for December 20, 2000. The parent canceled the December 20, 2000 CCC meeting because the consultant had not yet been hired, and the IHO's orders required the consultant's participation in the CCC meeting. No CCC was convened on December 20, 2000.
12. The parent states that, on or about December 13, 2000, the parent and the School psychologist tentatively agreed to reschedule the CCC for January 10, 2001. The parent notified the School psychologist on or about December 15, 2000, that the January 10 date would not work due to a previous commitment. No CCC was convened on January 10, 2001.
13. The parent and the School psychologist tentatively agreed to reschedule the CCC for January 15, 2001. The School sent notice of the January 15, 2001 CCC meeting on December 22, 2000. The parent learned on January 8, 2001, that an advocate and the private occupational therapist could not attend the January 15 CCC meeting. The parent notified the CCC Coordinator on January 8, 2001 of the unavailability of the two participants and requested to reschedule. The CCC Coordinator sent a fax to the parent on January 10, 2001, asking the parent to call her to make arrangements to reschedule the CCC meeting.
14. On January 11, 2001, the CCC Coordinator offered January 30, February 1, and February 2 as possible CCC dates. On January 12, 2001, the parent advised the CCC Coordinator that she chose January 30, 2001.
15. In the afternoon of January 12, the Director of Special Education faxed the parent a letter indicating that:
 - a. the School was going forward with the CCC meeting on January 15;
 - b. if she did not attend the CCC, the School would document her absence and conclude the CCC meeting; and
 - c. the School would set a date for the next CCC meeting and notify the parent of that date.The parent was not home when this fax was sent and did not have the opportunity to read the letter until Sunday, January 14, 2001. The parent did not attend a CCC on January 15.
16. The CCC was rescheduled and convened on January 19, 2001. The meeting was adjourned after approximately three hours without agreement on needed revisions to the Student's IEP. At that time, the CCC was rescheduled for January 23, 2001. Subsequent to the adjournment, the School's attorney advised the parent's attorney that the School psychologist was unavailable on January 23. The parties do not agree that the School's attorney said the CCC could not occur in the absence of the School psychologist. The parents' attorney informed the parents that the January 23 CCC had been canceled.
17. On January 22, the School psychologist advised the Assistant Director of Special Education, via fax, that her appointment conflicting with the previously scheduled January 23 CCC had been rescheduled for another date. On January 22, 2001, the School sent notice to the parent that the CCC would be convened on January 23, 2001. At approximately 9:00 a.m. on January 23, 2001, the CCC Coordinator sent a fax to the parents informing them that the School was having the CCC at 1:00 that day. The parents' attorney advised the School's attorney that the parents and their consultants had canceled plans for a January 23 CCC based upon the School attorney's representation of the School psychologist's unavailability and that 24 hours' notice was insufficient to allow the needed participants to make plans to attend.
18. On January 24, 2001, the School sent notice of a CCC to be convened on January 26, 2001. The

notice was sent home in the Student's book bag. The parent notified the Assistant Director of Special Education via voice mail and fax on January 25, 2001, that the short notice precluded their attendance on January 26 and requested the CCC convene on January 30, 2001, as previously arranged. The parent received no response from the School until 10:30 a.m. on January 26, 2001, when the Assistant Director of Special Education faxed the parent a memo stating that the CCC would proceed at 1:00 that day as scheduled.

19. The parent and an advocate attended part of the CCC meeting on January 26, 2001. The parent had to leave the CCC to be home for the Student's arrival from School. The parties disagree about whether the CCC formally adjourned at the time of the parent's departure, although they agree that the CCC was to reconvene on January 30, 2001.
20. The case conference committee convened on January 30, 2001, and developed an agreed-upon individualized education program (IEP).
21. The first bi-weekly progress report should have been sent to the parent during the week of December 18, 2000. Although the School continued to utilize a *Daily Written Communication* form on various dates in December 2000 and January 2001, these forms did not identify the Student's progress on IEP goals. The School subsequently developed a *Weekly IEP Progress Report* form, listing the IEP goals and objectives and a code for identifying the status of the Student's progress. The classroom teacher completed these reports for the weeks of January 1, January 8, and January 15. However, the parent did not receive these reports until the end of January.
22. The School's handbook states the following regarding visitors to the classroom: "Parents are always welcome to visit the children's classroom. However, parent should call and make arrangements with the teacher before coming to the school. Parents are expected to report to the office upon entering the school. "
23. On December 7, 2000, the parent sent a letter to the classroom teacher stating she would be in the classroom to observe the Student on December 11, 2000. Although the parent volunteers in the classroom, she requested time solely to observe the Student and not be involved in other classroom activities. On December 10, 2000, the classroom teacher left a voice message for the parent that December 11 was not convenient and suggested December 15 instead. The classroom teacher advised the parent that she would plan for the parent to observe on December 15.
23. On December 11, 2000, the parent sent a letter to the classroom teacher indicating that she would meet with the teacher on December 15, but requested to observe the Student prior to that date on a day convenient to the classroom teacher. The classroom teacher did not respond to the parent's December 11 request.
24. On December 15, 2000, the parent sent a letter to the classroom teacher, indicating the School psychologist had called about the Friday (12/15/00) meeting. The parent's letter advised that since there had been no response to her request to observe prior to the meeting, she assumed the meeting would be rescheduled.
25. The consultant was advised by the School's attorney to develop the comprehensive plan on her own and then share the plan with the School and the parent. The consultant did not meet with the parent or School staff specifically to solicit input into the comprehensive plan, but did incorporate items into the plan that resulted from other conversations with both the parent and School personnel. The parent also provided a list of training needs for the consultant's consideration. The consultant developed a comprehensive plan and submitted it to the School on or about January 26, 2001. The plan has not been discussed with the parent.
26. At the CCC on January 30, 2001, the parent requested that the consultation time to be provided for

the related service staff and the teacher be included in the Student's IEP. The School declined to include this information. The IHO's order does not specify that this time has to be written into the Student's IEP.

CONCLUSIONS:

- 1a. Findings of Fact #1 through #6 indicate that more than ten instructional days from the date the school received a copy of the IHO's written decision elapsed before the School obtained the services of the required consultant. Because 13 instructional days elapsed before the consultant was hired, the School failed to comply with the timelines imposed by the IHO's orders. However, because the School subsequently hired the consultant, no further corrective action will be required.
- 1b. Finding of Fact #2b reflects that the IHO ordered that the consultant's role to be determined "by collaboration among school personnel, the consultant(s) and the parents." Collaborate is defined by *Webster's New Collegiate Dictionary* as "to work jointly with others, [especially] in an intellectual endeavor. . . [and] to cooperate with an agency or instrumentality with which one is not immediately connected." Findings of Fact #7, #8, and #9 indicate that no identifiable collaboration has occurred among school personnel, the parent, and the consultant. Neither the School's identification of the consultant's role at the time of employment and during the January 31, 2001 meeting, nor the School's request for input from the parent less than five minutes prior to the January 31 meeting constitute collaboration as it is generally defined, intended by the IHO's written order, or interpreted by the Division.
- 1c. Findings of Fact #2c and #3b reflect the IHO ordered a final IEP be developed and approved within 20 instructional days of the date the School received the written decision. Findings of Fact #4 and #10 indicate that 20 instructional days elapsed on January 17, 2001. Findings #10 through #15 demonstrate that two CCC meetings were scheduled within the IHO's timelines and after the consultant had been obtained. After the parent notified the School on January 8 that the January 15 CCC date would not work, the School proposed three dates that were all subsequent to the twenty instructional day timeline. Finding of Fact #16 indicates that a CCC was formally convened on January 19, 2001, but no final IEP resulted from this meeting. Findings of Fact #17 through #19 reflect another CCC convened on January 26, 2001, but no final IEP resulted from this CCC. Finding of Fact #20 demonstrates that a final IEP was developed and approved at the CCC convened on January 30, 2001. Because the final IEP was not developed and approved within the twenty instructional day timeline, the School failed to comply with the IHO's orders.
- 1d. Finding of Fact #2d reflects the IHO ordered the School to provide the parents with "a written summary report of the Student's progress on IEP goals at least once every two weeks." Finding of Fact #21 demonstrates that the reports have not been provided at the intervals ordered. Therefore, the School failed to comply with the IHO's orders regarding the bi-weekly progress report.
- 1e. Finding of Fact #2e reflects the IHO's order that the parent be permitted access to the Student's classroom in the same manner as other parents. Finding of Fact #22 describes the School's visitation policy requiring the parent to make arrangements with the classroom teacher prior to any classroom visits. Findings of Fact #23 and #24 demonstrate that the parent attempted to make arrangements with the classroom teacher to observe the Student during the week of December 11, outside of any time she volunteered in the classroom. The classroom teacher responded to the first request that the date was not convenient, but she did not respond to the parent's subsequent request for a convenient date to observe the classroom. The lack of response to the parent's request to observe effectively denied the parent the opportunity to observe in the classroom and is contrary to the IHO's order.
- 1f. Finding of Fact #2f reflects the IHO's order that the consultant "work with" school staff and the

parents to develop a "comprehensive plan to address the student's needs in the classroom." Finding of Fact #25 indicates that the consultant developed the plan, at the School attorney's direction, in the absence of direct input from School staff or the parents. The consultant did, however, incorporate items into the plan that were the result of discussions with and information shared by the parent and School staff on other issues. Although the consultant used information from the parent and School staff in the development of the comprehensive plan, it is compliant with the IHO's order. However, the consultant should review the completed plan with both the School and the parent.

2. Finding of Fact #2h reflects the IHO's order that the August 19, 2000 IEP be implemented. By issuing an order to implement an IEP as written, the IHO has determined that the IEP has been written in accordance with the requirements of Article 7. Therefore, the Division will not go behind the IHO's orders to review the manner in which the annual goals are written, and no violation of 511 IAC 7-27-6(a)(2) is found.
3. Finding of Fact #2g indicates the IHO ordered the School to provide up to two hours per month per related service for collaboration between related service personnel and the Student's teacher. Finding of Fact #26 reflects that the IHO did not require this collaboration time to be included in the Student's IEP. The School's choice to not include the collaboration time as part of the Student's IEP is not contrary to the IHO's orders.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Lakeland School Corporation and the Northeast Indiana Special Education Cooperative shall:

1. Conduct a meeting to collaborate on and determine the consultant's role for the remainder of the school year and to review the comprehensive plan developed by the consultant. The meeting shall be conducted at a date and time agreed upon by the School superintendent, the parent, and the consultant, but no later than March 16, 2001. The School shall submit a written report of that meeting, including details of the role the consultant will have and any changes to be made to the comprehensive plan, to the Division and the parent no later March 23, 2001.
2. Reconvene the CCC to determine if compensatory services are needed as a result of the delay in developing a final IEP. The CCC shall convene at a date and time mutually agreed upon by the School superintendent, the parent, and the consultant, but no later than March 23, 2001. The CCC Coordinator shall serve as the single point of contact for scheduling the CCC meeting. A copy of the CCC Summary/IEP shall be submitted to the Division no later than March 30, 2001.
3. Submit an assurance statement that the written summary of the Student's progress on IEP goals will be provided to the parent every other week. The assurance statement must indicate the dates the report will be provided for the remainder of the school year, the person responsible for providing the report, and the method in which the report will be provided to the parent (e.g., mail, fax, sent home with the Student, etc.). If a particular reporting form will be used, a copy of the form is to be included with the assurance statement. The assurance statement shall be submitted to the Division and the parent no later than March 12, 2001.
4. Submit an assurance statement that the classroom teacher will respond promptly to the parent's request to observe in the classroom. The assurance statement shall be submitted to the Division and the parent no later than March 12, 2001.

